

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-VI**

CP (IB) No.1306/MB-VI/2022

Under **Section 7** of the Insolvency &
Bankruptcy Code, 2016 read with Rule 4 of
Insolvency & Bankruptcy (Application to
Adjudicating Authority) Rules, 2016

In the matter of:

**Sri Girija Prasanna Cotton Mills Limited
& Ors.**

[CIN: U17111WB1960PLC024677]

.....Financial Creditors/Applicants

versus

DDK Infratech Private Limited

[CIN: U45400MH2011PTC215797]

.....Corporate Debtor/Respondent

Order Reserved on: 29.08.2023

Order Pronounced on: 14.09.2023

Coram:

Mr. Sanjiv Dutt

Hon'ble Member (Technical)

Ms. Lakshmi Gurung

Hon'ble Member (Judicial)

Appearances:

For the Applicant(s)

: CS Ashish Lalpuria, Ld. Authorized
Representative

For the Respondent(s) : Advocate Mily Ghoshal, Ld. Counsel

Per: Sanjiv Dutt, Member (Technical)

1. This is an Application bearing C.P.(IB) No.1306/MB/C-VI/2022 filed jointly by five Petitioners/ Financial Creditors named below on 01.12.2022 under Section 7 of Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) in case of DDK Infratech Private Limited (hereinafter referred to as “Corporate Debtor”). The Corporate Debtor has filed an Interlocutory Application bearing IA No.1879(MB) 2023 on 10.05.2023 under Section 60(5) read with Section 66 of the Code bringing out certain alleged acts of perjury on part of the Financial Creditors and praying for dismissal of the main Company Petition (CP) being bad in law. Both IA and CP were taken up and heard together. Separate orders are being passed in the CP as well as the IA.
 - 1.1 One of the Financial Creditors is a Limited Company, namely, M/s. Sri Girija Prasanna Cotton Mills Limited which has filed a Board Resolution dated 15.11.2022 authorising Mr. Avishek Chakravarti, Director to file the present application on its behalf.
 - 1.2 The other four Financial Creditors are individuals, namely, Ms. Vundyala Neeraja, Ms. Padmavathi Vattipally, Ms. Aprajitha Venkat and Ms. Nanda Paike Kumari.

2. The brief facts of the case are as under:-

2.1 All five Financial Creditors had invested an amount aggregating to Rs.1,31,00,000/- (Rupees One Crore Thirty-One Lakhs only) by subscribing to 131 unlisted, unrated, secured, redeemable Non-Convertible Debentures (hereinafter referred to as “the NCDs”) of Rs.1,00,000/- each issued by the Corporate Debtor through private placement carrying coupon rate of 18% per annum for which a Deed of Adherence was entered into between the Corporate Debtor and the Financial Creditors. The tenure of the NCDs was 36 months from the date of issue. The date of subscription of the NCDs in respect of each Financial Creditor are given in **Table** below:-

Name of Subscriber	Date of Subscription	Amount (in Rs.)
Sri Girija Prasanna Cotton Mills Limited	03.10.2016	30,00,000
Vundyala Neeraja	28.04.2017	15,00,000
Padmavathi Vattipally	28.04.2017	21,00,000
Aprajitha Venkat	25.01.2017	15,00,000
Nanda Paike Kumari	07.01.2017	50,00,000
TOTAL		1,31,00,000

- 2.2 As per the Product Note issued by the Corporate Debtor, the redemption of NCDs was to take place in 6 equal quarterly instalments starting from the end of the 7th quarter from the disbursement.
- 2.3 The Corporate Debtor made payment of quarterly interest due on NCDs during the initial year 2016-17 but defaulted on this account soon thereafter during the years 2017-18 and 2018-19. This was followed by defaults in repayment of first instalment of the Principal Amount of NCDs during the years 2018-19 and 2019-20. The various dates of default towards payment of interest and repayment of first instalment of the Principal Amount in respect of each Financial Creditor have been shown in the **Table** below:-

Name of the subscriber	Date(s) of Default
Sri Girija Prasanna Cotton Mills Ltd.	01.07.2018 towards payment of interest as well as repayment of first instalment Principal amount
Vundyala Neeraja	01.07.2018 towards payment of interest and 01.02.2019 towards repayment of first instalment of Principal amount
Padmavathi Vattipally	01.07.2018 towards payment of interest and 01.02.2019 towards repayment of first instalment of Principal amount
Aprajitha Venkat	01.04.2017 towards payment of interest and 01.11.2019 towards repayment of first instalment of Principal amount

Nanda Paik Kumari	01.04.2018 towards payment of interest and 01.11.2018 towards repayment of first instalment of Principal amount
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2.4 As per Part-IV of the Application, the total amount claimed by the Financial Creditors is Rs.2,30,02,467/- (Rupees Two Crores Thirty Lakhs Two Thousand Four Hundred and Sixty Seven Only) as on 31.10.2022 with further interest thereon. The details of the outstanding amounts payable (inclusive of interest after adjusting the amount received) by the Corporate Debtor to each of the aforesaid five Financial Creditors as on 31.10.2022 as per their computation are given in **Table** below-

Name of the Financial Creditor	Amount due (Rs.)
Sri Girija Prasanna Cotton Mills Limited	61,30,040
Vundyala Neeraja	31,77,473
Padmavathi Vattipally	44,07,497
Aprajitha Venkat	31,52,731
Nanda Paik Kumari	61,34,726
Total	2,30,02,467

2.5 The Corporate Debtor vide its letter dated 15.02.2019 admitted that “the repayment of the principal along with the interest is due” to the NCD investors and promised “to return the entire money with

interest mostly before or by 15.04.2019". However, the Corporate Debtor failed to do so.

- 2.6 In the Minutes of Meeting held among the Corporate Debtor, the Debenture Holder's Representative i.e., Karvy Realty (India) Ltd. and the Debenture Trustee i.e., Milestone Trusteeship Services Pvt. Ltd, the director of the Corporate Debtor, Mr. Nimesh Desai "admitted and acknowledged the dues" of the Debenture Holders and also assured that they would clear the payment of one quarter interest due as on 30.06.2018 by 30.06.2019. He further assured that along with the said payment, they would also submit the repayment schedule for the entire outstanding dues. He informed that he was hopeful to clear all the outstanding dues, i.e., Principal amount and interest by 30.09.2019.
- 2.7 In a written communication dated 27.11.2020 addressed to the Debenture Holders' Representative i.e., Karvy Realty (India) Ltd., the Corporate Debtor came out with a Settlement Offer under which the latter offered to pay "Face Value" of the NCDs as full and final settlement amount to the debenture holders in four tranches. However, the above offer was rejected by the majority of debenture holders vide email dated 01.12.2020 addressed by Debenture Holder's Representative to the Debenture Trustee.
- 2.8 Meanwhile, Petitioner No.5 along with some other debenture holders had filed a complaint against the Corporate Debtor on 23.06.2021 under Sections 406 and 420 of India Penal Code, 1860 and Section 9 of The Karnataka Protection of Interest of Depositors (KPID) Act, 2004 in Basavanagudi Police Station, Bengaluru.

Pursuant to the said complaint, Petitioner No.5 received from the Corporate Debtor an amount of Rs.37,50,000/- (Rupees Thirty-Seven Lakhs Fifty Thousand Only) on 08.04.2022 out of Rs.50,00,000/- (Rupees Fifty Lakhs Only) owed to her towards the principal amount.

- 2.9 The Financial Creditors thus submit that the Corporate Debtor has failed to pay the interest and also failed to repay the principal amount to the Financial Creditors. Therefore, the Financial Creditors have jointly moved this Application before this Tribunal under Section 7 of the Code seeking initiation of CIRP of the Corporate Debtor.
3. The Corporate Debtor has filed its reply wherein it has raised a number of objections as to the maintainability as well as merits of the said petition on the following grounds:-
- 3.1 The Financial Creditor has filed numerous Petitions against the Corporate Debtor having the same cause of action and, therefore, the present petition is *res sub judice*. The Debenture Trustee, i.e., Milestone Trusteeship Services Pvt. Ltd. has already filed a Company Petition bearing No.860/2020 under section 7 of the Code which is pending adjudication before Bench-V of this Tribunal. The Corporate Debtor submits that this fact has been intentionally not disclosed to the Bench and the Financial Creditor is thus guilty of *suppressio veri suggestio falsi*. It is contended that the Financial Creditor is doing forum shopping by way of the present petition and thus wasting the precious time of this Tribunal.

- 3.2 The Financial Creditor does not meet the threshold limit prescribed under Section 4 of the Code. Financial Creditor No.5 i.e., Ms. Nanda Paiké Kumari has already received an amount of Rs.50,06,164/- (Rupees Fifty Lakhs Six thousand one hundred and sixty-four Only) towards the total funds contributed i.e., Rs.50,00,000/- (Rupees Fifty lakhs only). The Financial Creditor has intentionally not mentioned about the said amounts received by the Financial Creditor No.5 i.e., Ms. Nanda Paiké Kumari. Thus, out of the total alleged dues amounting to Rs.1,31,00,000/- (Rupees One Crore Thirty One Lakhs Only), an amount of Rs. 37,50,0000/- (Rupees Thirty Seven Lakhs And Fifty Thousand Only) has already been paid and the balance amount of default is only Rs.93,50,000/- (Rupees Ninety Three Lakhs and Fifty Thousand only) which is below the threshold limit of Rs.1 crore laid down in Section 4 of the Code. Further, interest of Rs.12,56,164/- (Rupees Twelve Lakhs Fifty Six Thousand One Hundred And Sixty Four only) has been paid to her.
- 3.3 The Financial Creditor has not annexed with its Petition any Debenture Holders Agreement with the Corporate Debtor. In the absence of such an agreement, it is difficult to understand how the Financial Creditor is eligible for the alleged interest as claimed in the Petition. The Financial Creditor is relying on a purported term sheet which neither deals with the rights of the Debenture Holders nor authorises it to initiate any action under the Code in case of default.
- 3.4 No event of default has occurred and the Petition too does not represent any such event of default. No notice of event of default has been served on the Corporate Debtor. As per clause 31.5 of the Debenture Trust-cum-Mortgage Deed dated 14.09.2016, the

Debenture Trustee in the event of occurrence of default was to act on the Special Resolution of the Majority Debenture Holders holding 75% of the nominal value of the outstanding Debentures whereas no such Special Resolution along with the written consent of the Debenture Holder Representative has been annexed to the Application. As per the said Debenture Trust-cum-Mortgage Deed (hereinafter referred to as "DTD"), in the event of default in redemption of debentures, a notice intimating the said default and calling for remedying the said default within a period of 30 days should have been issued to the Corporate Debtor which has not been done by the Financial Creditor. Hence, the Financial Creditor lacks adequate authority to initiate any action against the Corporate Debtor by way of filing the current Petition.

- 3.5 The Financial Creditor has no right or authority to initiate any action against the Corporate Debtor under the Code. While executing the DTD, the Financial Creditors herein along with other Debenture Holders had in their commercial wisdom incorporated the various terms and conditions as envisaged therein in order to provide reasonable opportunity to the Corporate Debtor to remedy any such event of default and to prevent the Corporate Debtor from facing any hardship in the event of commencement of CIRP proceedings. The various acts that the Financial Creditor may resort to in case of default have been specifically mentioned in the DTD. If the Financial Creditor had any intention to put the Corporate Debtor to the brutal suffering of the CIRP, the Debenture Holders would have incorporated the same in the DTD.

- 3.6 The Financial Creditor has limited right to initiate action by way of enforcing the security created in favour of the Debenture Trustee. The only remedy available to the Financial Creditor under the DTD is to liquidate and enforce the securities which can be construed as a waiver of any action to be taken under any other law for the time being in force.
- 3.7 The Corporate Debtor has been making continuous payments and thus no default has arisen and no debt has become due and the present petition filed by the Financial Creditor is pre-mature. It is stated that payments have been made to the Debenture Holders in the past few months and even after the filing of the present Petition. Majority of the debenture holders have voted in favour of the Corporate Debtor and accordingly accepted the settlement for an amount of Rs.21.83 crores.
- 3.8 No recall notice/demand notice has been issued by the Financial Creditor which is a pre-requisite for initiating action under Section 7 of the Code. Nor has any Record of Default (RoD) been generated from the NeSL website which is a further mandatory condition for initiation of any action under Section 7 of the Code.
4. The Financial Creditor while replying to the objections raised by the Corporate Debtor makes the following submissions:-
- 4.1 The Debenture Trustee i.e., M/s. Milestone Trusteeship Services Private Limited had filed a Section 7 Petition against Corporate Debtor in the year 2020 but so far the same has not been adjudicated and, thus, whichever petition is adjudicated first, the same shall proceed and upon admission, the other petition will automatically

become infructuous. Further, reliance is placed on judgment of Hon'ble NCLAT Chennai Bench dated 12.08.2021 in the matter of ***Mr. T. Prabhakar v. Mr. S Krishnan and Ors.*** wherein it has been held that "*There is no fetter in law for the Debenture Holder to file an application seeking to initiate CIRP against the concerned Corporate Debtor without adding the 'Debenture Trustee'....*".

- 4.2 As regards the objection raised in respect of the threshold limit, it is submitted that the total amount of claim will include not only the amount of principal debt but also the periodic interest payable on the NCDs and the penal interest for the delayed payment as was clearly stipulated in the Product Note itself which aggregates to Rs.2.30 crores approximately. As per Section 5(8) of the Code, financial debt includes interest i.e., time value of money. In the present case, even the DTD on which the Respondent has relied provides for (i) Tenure, (ii) Coupon Rate, (iii) Default/Penal Rate and (iv) Redemption schedule of the NCDs. Thus, it is submitted that the monetary criteria of Rs.1 crore is more than fully met as per Section 4 of IBC and the Application is, therefore, maintainable in the present case. In this connection, the Financial Creditor has placed reliance on the judgment of Hon'ble NCLAT, Principal Bench dated 15.07.2022 in the matter of ***Mr. Prashant Agarwal (Member of Suspended Board of Bombay Rayon Fashions Limited) v. Vikash Parasrampuria and Others [Company Appeal (AT) (Ins) No. 690 of 2022]***.

- 4.3 On the issue of no default having arisen between the parties as the Corporate Debtor has been making continuous payments to the Financial Creditor, the Financial Creditor has placed reliance on the judgment of the Hon'ble Supreme Court in the matter of *E.S. Krishnamurthy v. M/s Bharath Hi Tech Builders Pvt. Ltd.* 2021 SCC Online SC 1242 wherein it has been held that "*The Adjudicating Authority is empowered only to verify whether a default has occurred or if a default has not occurred. Based upon its decision, the Adjudicating Authority must then either admit or reject an application respectively. These are the only two courses of action which are open to the Adjudicating Authority in accordance with Section 7(5)*".
- 4.4 As regards the plea taken by the Corporate Debtor that the Financial Creditor had no right or authority in terms of the DTD to initiate any action against the Corporate Debtor under the Code, the Financial Creditor has invited attention to an order of a co-ordinate Bench of NCLT, Mumbai dated 11.08.2021 in the matter of *Devika Sharma & ors v. Kasata Hometech (India) Pvt. Ltd.* [CP No. 798/IBC/MB/2020] wherein similar arguments raised on behalf of the corporate debtor in that case were found to be "beyond the scope" of the petition under section 7 "as per settled law" and CIRP was accordingly ordered to be initiated.
- 4.5 With regard to the plea that the mandatory record of default had not been generated from NeSL website, it is submitted that NeSL registration and submission of default against the Corporate Debtor were done by each of the petitioners/Financial Creditor.

4.6 Finally, it is submitted that attempts made by both the parties for arriving at some amicable settlement have failed. It is, therefore, prayed that the present petition may be allowed and the Corporate Debtor admitted into CIRP.

ANALYSIS AND FINDINGS

5. Upon hearing the Counsel for both parties and having carefully gone through the materials available on record, our findings in the matter are as under:-

5.1 The Corporate Debtor contends that the present petition is *res sub judice* in as much as the Debenture Trustee has also filed a separate petition No.860 of 2020 under Section 7 of the Code having the same cause of action which is pending before another Bench of this Tribunal. According to the Corporate Debtor, since the Debenture Trustee has already moved an Application under Section 7 of the Code, the individual Debenture Holders have no right or authority to initiate parallel action against it for initiating CIRP under Section 7 of the Code. In this regard, it is pertinent to mention that the provisions of Civil Procedure Code, 1908 are not made fully applicable to the proceedings before the Adjudicating Authority/NCLT. This Tribunal is not a 'court' in a strict sense but a quasi-judicial body. It is well-settled that NCLT has been constituted as an Adjudicating Authority under the Code. The process of adjudication by NCLT under the Code is summary in nature and does not involve "trial of any suit". Unlike a civil court, the NCLT does not have general jurisdiction under section 9 of the CPC. The principle of *res sub judice* enshrined in Section 10 of the

CPC will have no applicability in the peculiar facts and circumstances of this case. Merely because the Debenture Trustee has also filed a petition under section 7 of the Code much like the Financial Creditors in the present case, it does not mean that the individual Debenture Holders/ Financial Creditors do not have the right to approach the Adjudicating Authority under Section 7 of the Code. Further, they are not going to derive any double benefits by way of the present petition. The objective behind section 10 of the CPC is to avoid two conflicting or contradictory decisions in the same matter by different courts. However, as regards the parallel proceedings initiated by the Debenture Trustee as well as the individual Debenture Holders under Section 7 of the Code, if either of the petitions is admitted, the other will become infructuous. Therefore, the above plea taken by the Corporate Debtor is found to be misconceived and is accordingly rejected.

- 5.2 On the issue of Financial Creditor not meeting the threshold limit prescribed under Section 4 of the Code, we find no merit in the argument of the Corporate Debtor that the Principal amount of NCDs is below the limit of Rs.1 crore, as a “financial debt” has been clearly defined under Section 5(8) to mean “a debt along with interest, if any, disbursed against the consideration for the time value of money...”. It is a settled position in law that when an agreement clearly stipulates the interest clause, the claim amount has to be considered along with the interest accrued thereon. In the present case, it is observed from the record that the DTD on which the Corporate Debtor has relied specifically provides for (i) Tenure, (ii) Coupon Rate, (iii) Default/Penal Rate and (iv) Redemption

schedule of the NCDs. Therefore, the amount of about Rs.2.30 crores claimed by the Financial Creditor inclusive of interest being far above the threshold limit of default satisfies the requirement of Section 4 of the Code. The plea taken on behalf of the Corporate Debtor on this account is found to be devoid of merit and hence rejected.

- 5.3 To contend that there is no default on part of the Corporate Debtor as no event of default had occurred is nothing but a travesty of the facts available on record. Clause 33 of the DTD placed on record by the Corporate Debtor categorically specifies *inter alia* that default in payment of interest/ outstanding Principal Amount and default in redemption of debentures shall constitute Events of Default under the DTD. It is also noticed from the record that the Corporate Debtor has vide its letters dated 15.02.2019 and 27.11.2020 addressed to the NCD investors and Karvy Realty (India) Ltd., the Debenture Holders' Representative admitted that "there has been a delay in the payment of interest of April, 2018" and "we are trying our best to regularize the payments as soon as possible" and "the payment to the Debenture Holders is being delayed", the word 'delay' here being used by the Corporate Debtor as a euphemism for 'default' within the meaning of the Code. It is further observed from the record that a Legal Notice dated 30.04.2019 was issued to the Corporate Debtor by the Debenture Trustee on instructions of and on behalf of the Debenture Holders regarding default in payment of Principal and interest amount which did not yield any result. The claim of the Corporate Debtor that it has been making continuous payments to the Debenture Holders even after the filing of present

petition is also not borne out from the record as no such payment has been received by any of the Financial Creditors. In view of this position, the plea raised on behalf of the Corporate Debtor that no default or event of default has occurred is found to be contrary to the facts and materials available on record and is accordingly rejected.

- 5.4 As regards the plea taken on behalf of the Corporate Debtor that in terms of the DTD, the Financial Creditor/ Debenture Holder has no right or authority to initiate any action against the Corporate Debtor under the Code, we are unable to find merit in the above contention due to various reasons. In the first place, there is no doubt that all five petitioners are Financial Creditors who have jointly filed the present petition as is permissible under Section 7 of the Code. Secondly, the DTD dated 14.09.2016 has been executed among the Corporate Debtor, its related concern, M/s.Shreeji Construction acting as Mortgagor-2 and Milestone Trusteeship Services Pvt. Ltd. in its capacity as the Debenture Trustee. As the Financial Creditors/ Debenture Holders are not parties to the said DTD in their individual capacity, it cannot be taken as determinative of the rights or authority of the Debenture Holders. Thirdly, although the DTD in clause 1 refers to the 'Debenture Holders Representative Agreement', it is admitted by the Corporate Debtor in para 14 of its reply to the Petition that the said Debenture Holders Representative Agreement which would have dealt with the respective rights, duties, actions and powers to be exercised by the Debenture Holders Representative and the Debenture Holders "was never executed". This explains why the Financial Creditors have

not filed any Debenture Holders Agreement along with the petition and have instead furnished a Product Note or term sheet containing the terms and conditions of the NCDs issue of the Corporate Debtor. Fourthly, be that as it may, it is clearly mentioned in clause 32(e) of the DTD that on the occurrence of events of default, the Debenture Trustee shall *inter alia* have the authority to “***exercise such other rights as the Trustee may deem fit under Applicable Law***”. In the absence of Debenture Holders Agreement, there is no valid reason to assume that similar right or authority to seek their remedies in case of default “under Applicable Law” including the Code could have been denied to the Debenture Holders. And finally, it is a well-settled and universally accepted legal principle that there can be no estoppel against the law. From the above discussion, it follows, therefore, that the powers of the Debenture Trustee for enforcing the security in terms of the DTD do not preclude the beneficial owners of NCDs from seeking their remedies against the Corporate Debtor in case of default under all applicable laws including by way of present application under Section 7 of the Code. Thus, the *locus standi* of the Financial Creditors/ Debenture Holders to file the present petition stands duly established.

- 5.5 At this juncture, it will not be out of place to refer to the judgment of Hon’ble NCLAT, Delhi Bench in ***Reliance AIF Management Company Limited & ors. v. Bharucha & Motivala Infrastructure Private Limited (2021) ibclaw.in 207 NCLAT*** wherein while dealing with similar argument raised on behalf of the corporate debtor in that case, it has been held at paragraph 25.1 that “...*the Corporate Debtor had contended that the Petitioners are only holders of the NCDs and are not*

parties to the debenture trust deed and, therefore, the debenture holders do not have any locus to file the present Petition as only debenture trustee can file the present Petition. The Bench finds this argument taken by the Corporate Debtor to be untenable as it is a fact that the Debenture Trustee is for the convenience of the Debenture Holders and their benefit. It is for this reason that the Debenture Trustee is only an agent of the Debenture Holders. The presence of a Trustee in no way limits or erases any right of the debenture holders under any circumstances”. Similarly, the Hon’ble NCLAT, Delhi Bench has in a recent judgment in ***Rahul Arunprasad Patel v. Invesco Asset Management (India) Pvt. Ltd.*** [Company Appeal (AT) Insolvency No.346 of 2021] also upheld the right of the debenture holders to maintain an Application under section 7 of the Code independent of that of a debenture trustee.

- 5.6 Further, a bare perusal of the DTD reveals that there is no express bar provided therein which prevents the Debenture Holders/ Financial Creditors from independently initiating any proceedings in accordance with law. Therefore, the contention of the Corporate Debtor that only the Debenture Trustee is empowered to initiate any action and the Financial Creditors being Minority Debenture Holders have no *locus* to declare a default or to take any action unilaterally is found to be bereft of substance and is accordingly rejected.
- 5.7 As regards the alleged failure of the Financial Creditor to obtain a Special Resolution from the Debenture Trustee or written consent of the Debenture Holders Representative in terms of the DTD, it is noticed that the present petition has been filed by individual

Debenture Holders/ Financial Creditor and not by the Debenture Trustee. Therefore, we are of the considered view that there was no need of obtaining any Special Resolution etc. by the individual Debenture Holders while filing the present petition.

5.8 As regards the objection relating to limited right of the Financial Creditors under the DTD to enforce security created in favour of the Debenture Trustee, it is observed that the petitioners before us are individual Debenture Holders/Financial Creditors who have moved the present application not for enforcing any security but for initiating CIRP against the Corporate Debtor under Section 7 of the Code. As already discussed in paras 5.4 and 5.5 above, the individual Debenture Holders/Financial Creditors are entitled to approach this Tribunal for initiating the CIRP of the defaulting Corporate Debtor by invoking the provisions of Section 7 of the Code.

5.9 As regards the objection relating to non-issuance of demand or recall notice by the Financial Creditor before initiating CIRP under the Code, it is pertinent to note that the issuance of Demand Notice is a mandatory requirement only under Section 8 of the Code for initiation of CIRP under Section 9. However, for initiating CIRP under Section 7 of the Code, there is no mandatory notice required to be given to the Corporate Debtor. In view of the same, the said contention is found to be untenable and is accordingly rejected. It is now well-established that a financial creditor can trigger insolvency by filing an application directly under Section 7 of the Code without having to serve any demand notice on the corporate debtor. In *Swiss*

Ribbons Pvt. Ltd. & ors. v. Union of India and ors (2019) 4 SCC 17 (SC), it has been held that, “*the scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code...*”.

- 5.10 Further, the Financial Creditors have submitted the record of default issued by NeSL with respect to individual Debenture Holders which is sufficient to prove the existence of debt and default on part of the Corporate Debtor. The plea that filing of record of default with the IU/NeSL is a mandatory requirement is unsustainable in so far as Section 7(3)(a) categorically provides that the Financial Creditor shall along with the application furnish record of the default recorded with the information utility or such other record or evidence of default as may be specified. Thus, the above plea is of no avail to the Corporate Debtor.
- 5.11 It is now well-settled that while considering an application filed by a financial creditor under Section 7 of the Code for initiating CIRP against a corporate debtor, the Adjudicating Authority must be satisfied that:
- a. A “default” in respect of a financial “debt” has occurred;
 - b. The application is complete in all respects and
 - c. There is no disciplinary proceedings pending against the proposed Resolution Professional.

Once the Adjudicating Authority is satisfied that the default has occurred, it has no discretion to refuse the admission of the application under Section 7 of the Code. As held by the Hon'ble SC in *Innoventive Industries Ltd. v. ICICI Bank and anr. (2018) 1 SCC 407 (SC)*, “the scheme of the Code is to ensure that when a default takes place in the sense that a debt becomes due and is not paid, the insolvency resolution process begins.”

- 5.12 There is no doubt that the subscription made by the Financial Creditors to the NCDs issued by the Corporate Debtor in the instant case is in the nature of a “financial debt” within the meaning of Section 5(8)(c) of the Code. The Financial Creditors have also placed on record relevant evidence to demonstrate that there was a “default” on part of the Corporate Debtor within the meaning of Section 3(12) of the Code in so far as the latter had failed to make payment of quarterly interest due on NCDs as well as repayment of first instalment of the principal amount of NCDs after such amount(s) became due and payable on respective dates mentioned in the Table in para 2.3 above.
- 5.13 In view of the above analysis and findings, it is appropriate to say that the law with respect to the right of the individual Debenture Holders to proceed under the Code is well-settled and that the pendency of separate petition filed by the Debenture Trustee in the matter cannot limit the Debenture Holders’ right to prefer the present petition for initiation of CIRP of the Corporate Debtor. Thus, the Company Petition under adjudication is found to be maintainable under the law as it stands today. Therefore, we find no merit in the contention of the Corporate Debtor that the facts of the

cases relied upon by the Financial Creditor are distinguishable from those of the present case where parallel proceedings have been initiated by both the Debenture Trustee and the Debenture Holders. Both the proceedings are bound to meet their fate as per the procedure prescribed in law.

5.14 Considering the facts and circumstances of the case and the findings reached above, it is crystal clear that there exists a “financial debt” as defined under Section 5(8) of the Code by way of subscription to NCDs by the Financial Creditor coupled with “default” of the said debt on part of the Corporate Debtor. Hence, it is found to be a fit case for directing initiation of CIRP against the Corporate Debtor. This Bench is, therefore, of the considered view that the present Petition filed under Section 7 of the Code to initiate the CIRP in the matter of the Corporate Debtor deserves to be “**Admitted**”.

5.15 The Applicant has proposed the name of Mr. Pramodkumar Ramesh Ladda, a registered insolvency resolution professional having Registration Number [IBBI/IPA-002/IP-N00694/2018-2019/12148] and Email address [csladdaji@gmail.com] as Interim Resolution Professional to carry out the functions as mentioned under the Code and has also given his declaration in Form 2 dated 28.11.2022 stating that no disciplinary proceedings are pending against him.

ORDER

This Application bearing **C.P. (IB) No.1306/NCLT/MB-VI/2022** filed under Section 7 of the Code by the Financial Creditor for

initiating Corporate Insolvency Resolution Process (CIRP) in the case of **DDK Infratech Private Limited**, the Corporate Debtor, is **Admitted**. We further declare moratorium under Section 14 of the Code with consequential directions as mentioned below:-

- I. That this Bench as a result of this prohibits:
 - a) the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - b) transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - c) any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and
 - d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of the Code shall not apply to:

- a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
 - b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. That the order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under subsection (1) of Section 31 of the Code or passes an order for the liquidation of the Corporate Debtor under Section 33 of the Code, as the case may be.
- V. That the public announcement of the Corporate Insolvency Resolution Process shall be made immediately as specified under Section 13 of the Code.
- VI. That this Bench appoints Mr. Pramodkumar Ramesh Ladda, a registered insolvency resolution professional having Registration Number [IBBI/IPA-002/IP-N00694/2018-2019/12148] and Email address [csladdaji@gmail.com] as Interim Resolution Professional to carry out the functions as mentioned under the Code. The fee payable to IRP/RP shall be governed by the IBBI Regulations/ Circulars/Directions issued in this regard. He shall make the necessary disclosures as required under the relevant IBBI Regulations, 2016 within a period of one week of this order. He shall take charge of the CIRP of the Corporate Debtor with immediate effect and would take all necessary steps as specifically mandated under Sections 15, 17, 18, 20 and 21 of the Code read with extant

provisions of IBBI (Insolvency Resolution of Corporate Persons) Regulations, 2016.

- VII. The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the initial CIRP cost including expenses on issuing public notice and inviting claims. The expenses incurred by IRP out of this fund are subject to approval by the Committee of Creditors (CoC). The amount so deposited shall be interim finance and liable to be paid back to the Financial Creditor/applicant on priority upon funds from the CoC becoming available with IRP/RP.
- VIII. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai for updating the Master Data of the Corporate Debtor.
- IX. The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email and WhatsApp.
- X. Besides, a copy of this order shall also be forwarded by the Registry of this Tribunal to the IBBI for their record.

Sd/-
Mr. Sanjiv Dutt
Member (Technical)

Sd/-
Ms. Lakshmi Gurung
Member (Judicial)

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT VI

Item No. 6.

IA1879(MB)2023 In C.P. (IB)/ 1306(MB)2022

CORAM:

SHRI SANJIV DUTT,
MEMBER (TECHNICAL)

MS. LAKSHMI GURUNG
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON **14.09.2023**

NAME OF THE PARTIES : **Sri Girija Prasanna Cotton Mills Ltd**

Vs

DDK Infratech Private Limited

Section 60(5) r/w Section 66, 7 of IBC, 2016

ORDER

CS Ashish Lalpuria appeared for the Financial Creditor. Adv. Mily Ghosal a/w Adv. Sophia Hussain appeared for the Corporate Debtor.

IA 1879/2023 :-

1. The present IA has been filed by the Corporate Debtor under section 60(5) r/w section 66 of IBC, 2016 with the request to dismiss the CP being bad in law. Counsel for the Applicant submits that Financial Creditor/ Respondent No. 4 i.e. Nanda Paike Kumari had entered into a Settlement Agreement with a sister concern of the Corporate Debtor i.e. Siddharth Enterprises and her claim had been settled. It is submitted that Respondent No.4 (hereinafter referred to as "R-4") had suppressed the said agreement from the Tribunal and was guilty of playing perjury on the Tribunal besides intending to invoke CIRP against the Corporate Debtor with malicious intention.

2. The applicant submits that R-4 had made investment of Rs.50,00,000/- in NCDs of the Corporate Debtor. R-4 residing in Bengaluru had approached the local Police station on 14.06.2019 and sought for registering of FIR against the Corporate Debtor and accordingly the accounts of the Corporate Debtor were frozen. R-4 and the Corporate Debtor had entered and executed a Settlement Agreement dated 17.11.2021 with one of the sister concerns of the Corporate Debtor i.e. M/s Siddharth Enterprises.
3. Accordingly, in the said settlement agreement, it was inter-alia agreed between the parties that the payments shall be made in the below mentioned manner :-
 - a. First Installment amounting to Rs. 12,56,164/- by way of cheque dated 15.07.2022 bearing cheque no. 000039.
 - b. Second Installment amounting to Rs. 12,56,164/- by way of cheque dated 15.08.2022 bearing cheque no. 000042.
 - c. Third Installment amounting to Rs. 12,56,164/- by way of cheque dated 15.09.2022 bearing cheque no. 000035.
4. In accordance with the said agreement, R-4 had received a further amount of Rs.12,56,164/- by way of cheque bearing no. 000039 dated 15.07.2022 which was duly received and acknowledged by her. Accordingly, the applicant submits that R-4 had in fact given up her rights against the Corporate Debtor and Siddharth Enterprises had subrogated instead of the Corporate Debtor. Thus, it is submitted that R-4 has no rights against the Corporate Debtor and any alleged breach of payment by the Corporate Debtor should in fact be agitated against Siddharth Enterprises.

5. Heard the parties and perused the records. It is seen from the averments in C.P. 1306/2022 filed by the Financial Creditor that the factum of police complaint lodged by R-4 at Bengaluru against the Corporate Debtor as well as the payments subsequently received by R-4 towards the Principal amount of NCDs has already been mentioned therein. It is also noticed that R-4 had duly accounted for such payments received by her in the computation of outstanding amount mentioned in the main Company Petition. Thus, the allegation of perjury on the part of R-4 is found to be not sustainable. The applicant has also not been able to demonstrate as to how the filing of the present application is malicious under section 60(5).
6. In view of the above, the present IA lacks merit and is **dismissed** and **disposed of**.

Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)

Sd/-
LAKSHMI GURUNG
MEMBER (JUDICIAL)

//Manish//